REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAKASAGO IMPORT-EXPORT CORPORATION,
Petitioner,

-versus-

C.T.A. CASE NO. 6408

COMMISSIONER OF INTERNAL REVENUE and the BIR ACTING REGIONAL DIRECTOR, REVENUE REGION NO. 7, QUEZON CITY, METRO MANILA,
Respondents.

Promulgated
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RESOLUTION

Submitted for resolution is respondent's "Motion to Dismiss" filed on August 5, 2002, praying for the dismissal of the above-entitled case on the ground of lack of jurisdiction.

The antecedent facts are as follows:

On June 8, 1998, petitioner received Letter of Authority No. 172148 dated May 19, 1998, for the examination of its books and other accounting records for all internal revenue taxes except VAT covering the period January 1, 1996 to December 31, 1996. *(Annex "A")* An undated first notice was thereafter issued for the examination of the records/documents stated therein. *(Annex "B")*

The aforementioned letter of authority was revalidated bearing the number 00017259 dated May 31, 1999 for the same purpose as the previous one. *(Annex "C")*

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A Second Request for Presentation of Records dated July 30, 1999 was received by petitioner. Thus, it submitted its books and other accounting records to the BIR on the following dates: August 11, 1999, September 22, 1999, and September 29, 1999.

On October 14, 1999, BIR Revenue Examiner Ms. Carmela G. Hitosis, allegedly presented two (2) copies of prepared Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated October 12, 1999 to Ms. Marvilet M. Gatan, petitioner's Administrative Assistant. *(Annex "H").* This waiver was to expire on July 31, 2000.

The waiver was supposed to be signed by Ms. Eva Sobrevilla, petitioner's Administrative Officer. However, since she was not around at that time, Ms. Hitosis allegedly requested Ms. Gatan to type the latter's name, company and affix her signature on the waiver. The former allegedly stated that the "document will not do Ms. Gatan or the company any harm." *(Item no. 10, Petition for Review)* Petitioner further represented that Ms. Gatan was without authority from the company and that she was not informed of the full content of the waiver, except on the representation of Ms. Hitosis, BIR's revenue examiner.

In a letter dated May 24, 2000, petitioner explained the discrepancies in the 1996 Audited Financial Statements for the year *vis-à-vis* the documents examined by the respondent's revenue examiner. *(Annex "J")*

A Post Reporting Notice dated May 30, 2000 was received by petitioner containing the deficiency income tax in the amount of P478,511.42 as recommended by

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the revenue examiner who conducted the investigation. *(Annex "K")* Thereafter, an informal conference was scheduled on June 12, 2000.

On December 15, 2000 or six months after the informal conference and five months after the lapse of the first waiver, the BIR through its Revenue Officer Mr. Amor Vidal B. Ratuita, presented to Ms. Gatan, another waiver of the Statute of Limitations dated December 15, 2000. *(Annex "N")* Ms. Gatan affixed her signature to the waiver which, according to the BIR revenue examiner would not do any harm to her or the company.

On March 19, 2001, petitioner received another Post Reporting Notice/Assessment from the respondent. Petitioner likewise received the following documents on the following dates, to wit:

1. Preliminary Assessment Notice dated June 7, 2001 received on June 14, 2001.
2. Formal Letter of Demand with Assessment Notices all dated June 29, 2001, and received by petitioner on July 2, 2001.
3. Collection Letter dated October 11, 2001 and received on October 12, 2001.
4. Final Notice Before Seizure dated November 8, 2001 and received on November 9, 2001.

On February 4, 2002, petitioner, through its External Auditor, filed a letter to the respondent Commissioner setting the defense of prescription, for respondent's failure to issue the assessment within the three-year prescriptive period. *(Annex "T")*

Thereafter, on February 14, 2002, respondent issued a Warrant of Distraint and/or Levy. *(Annex "U")* On March 13, 2002, petitioner filed its "Petition for Review and Annulment of Warrant of Distraint and/or Levy" with this court.

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In his Answer filed on May 2, 2002, respondent averred that the subject deficiency tax assessments have become final and executory by reason of petitioner's failure to protest the same within the period prescribed by law, and thus, this court has no jurisdiction to entertain the instant case.

Both parties have already filed their pre-trial briefs. After the pre-trial was terminated, petitioner filed on July 30, 2002, an "Urgent Motion for Suspension of Collection of Tax".

Respondent, on the other hand, filed his "Motion to Dismiss" on August 5, 2002, moving for the dismissal of the instant case on the ground of lack of jurisdiction, thereby reiterating the averment in his Answer. Considering that there is allegedly no dispute over the said deficiency assessments, the court has no jurisdiction to entertain the instant case.

In petitioner's "Opposition to the Motion to Dismiss", it asserted that said motion was filed beyond the period allowed by the rules. The Motion to Dismiss should have been filed within the time prescribed for filing respondent's Answer, pursuant to Section 1, Rule 6 of the Rules of Court of Tax Appeals. Otherwise, the defenses and objections not pleaded in the answer are deemed waived.

Petitioner further contended that even granting *arguendo* that the motion to dismiss was filed on time, the same must be denied for lack of merit. According to petitioner, this court has jurisdiction over the subject matter of the instant petition, the annulment of the warrant of distraint and/or levy falls under "other matters arising under the National Internal Revenue Code". Furthermore, after the period to assess had lapsed, no valid assessment can be made. Therefore, the assessments issued by respondent after the lapse of the prescriptive period, can neither attain finality nor can it be executory and demandable.

We rule to grant respondent's motion to dismiss.

Pursuant to Section 228 of the 1997 NIRC, a taxpayer has thirty (30) days from receipt of an assessment to a file a protest, and another sixty (60) days from such filing to submit all the documents pertinent to the investigation being conducted. Thereafter, the Commissioner of Internal Revenue has one-hundred eighty (180) days from submission of said documents within which to rule on the protest. The taxpayer has thirty (30) days to appeal to this court which is reckoned from the taxpayer's receipt of the said decision or from the lapse of the one-hundred eighty (180)-day period, otherwise, the decision shall become final, executory and demandable.

Therefore, assessments become final and unappealable if the taxpayer does not file an administrative protest against an assessment within thirty days from receipt thereof, and when a decision of the Commissioner on an administrative protest is not appealed to the Court of Tax Appeals within thirty days from receipt thereof, the decision shall become final, executory, and demandable.

In the instant case, petitioner received on June 14, 2001, a Preliminary Assessment Notice dated June 7, 2001, and a Formal Letter of Demand with Assessment Notices dated June 29, 2001, on July 2, 2001. However, petitioner did not make any positive act to object to the invalidity of the said assessment notices, within the period granted by law, ie. thirty days from receipt of the Assessment Notices. It was only on February 4, 2002 that petitioner filed a letter alleging that respondent issued the subject

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assessment notices beyond the prescriptive period, thereby setting up the defense of prescription, pertinent portion of which is hereby quoted as follows, to wit:

> "This refers to the attached Formal Letter of Demand dated June 29, 2001, which was received on July 3, 2001 by our client, Takasago Import-Export Corporation, and to the Collection Letter dated October 11, 2001 and Final Notice Before Seizure dated November 8, 2001.
>
> We wish to inform you that our above-named client did not receive any assessment within the three-year period after the last day prescribed by law for the filing of the return. Neither your office has issued any assessment within the said three-year period.
>
> xxx xxx xxx
>
> For and in behalf of our client therefore, we are availing and setting up the defense of prescription."

In view of petitioner's failure to file the protest within thirty (30) days from receipt of the Formal Assessment Notices, as prescribed by law, it can no longer contest the subject assessment beyond the thirty-day prescriptive period, because it had already become final, executory and unappealable. This notwithstanding the allegation of the petitioner that the assessment in question has prescribed for having been issued beyond the required three-year period.

Under Section 7, the assessment must be disputed before this court can acquire jurisdiction over the subject matter. In other words, petitioner could have easily raised the issue of prescription, among others, in the administrative level, to be filed within thirty-days from receipt of the assessment notice on July 2, 2001.

Prescription is not jurisdictional but a mere defense, which must be invoked and raised seasonably. It must be raised in the administrative level otherwise it is deemed waived (Arches vs. Bellosillo 20 SCRA 32; Sy Chiuco vs. Collector of Internal Revenue

(KS)

107 Phil. 428; Republic of the Philippines vs. Lim Tian Teng Sons & Co., Inc.16 SCRA 584)

The issue on prescription was belatedly raised by petitioner in its letter dated February 4, 2002. Petitioner's right to protest was, therefore, waived by its failure to contest the assessment within thirty days from receipt thereof. Hence, the assessment became final and executory.

Accordingly, respondent's motion to dismiss is hereby **GRANTED** and the instant petition is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge

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